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July 3, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: February 6, 2008

Case Number: TSO-0601

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) for access authorization.<sup>1/</sup> The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible to retain his access authorization. After reviewing the evidence before me, I find the Individual should not have his access authorization restored.

***I. Background***

This administrative review proceeding began when a Department of Energy (DOE) Office, suspended the Individual's access authorization based upon derogatory information in the possession of the DOE Office that created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the DOE Office subsequently issued a Notification Letter that included a statement of the derogatory information causing the security concern.

The security concern cited in the Letter involves the Individual's misuse of alcohol. The Notification Letter stated that the Individual has been diagnosed by a DOE consulting psychiatrist as suffering from alcohol dependence, leading to an illness which causes, or may cause, a significant defect in his judgment or reliability. The Notification Letter also indicated that the Individual's use of alcohol contributed to his divorce. According to the

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<sup>1/</sup> Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5(a).

Notification Letter, this constitutes derogatory information under 10 C.F.R. § 710.8(h) and (j) (hereinafter Criterion H and Criterion J)).<sup>2/</sup>

The DOE consulting psychiatrist evaluated the Individual on October 9, 2007, and issued her report on October 16, 2007. DOE Ex. 5. During the evaluation, the Individual told the DOE consulting psychiatrist that prior to June 25, 2007, he was consuming twelve to fourteen 12-ounce beers over a six-hour period. DOE Ex. 5 at 4. He became intoxicated three times a week. DOE Ex. 5 at 4. He experienced blackouts approximately twice a month in the eight years prior to June 2007. DOE Ex. 5 at 4. The DOE consulting psychiatrist indicated that the Individual reported that he had been abstinent from alcohol since June 25, 2007, and had been attending Alcoholics Anonymous (AA) since June 30, 2007. In addition, the DOE consulting psychiatrist indicated that the Individual had been attending an intensive outpatient treatment program (IOTP), from which he graduated on August 1, 2007, and one-on-one counseling since January 2007.

In her report, the DOE consulting psychiatrist indicated that in order to establish rehabilitation from his alcohol dependence, the Individual should (1) continue his attendance at AA with a sponsor and his current aftercare program for another eight months past the date of the report, (2) continue one-on-one counseling for another six months past the date of the report, and (3) participate in an abstinence agreement with him employer, including monitoring. DOE Ex. 5 at 12-13. The DOE consulting psychiatrist indicated that adequate evidence of reformation would be either one year of absolute abstinence, if the Individual attends the program as she has outlined it above, or two years of absolute abstinence if the Individual does not continue attending AA, the aftercare program, and one-on-one counseling. DOE Ex. 5 at 13.

The Notification Letter informed the Individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. Upon receipt of the Notification Letter, the Individual requested a hearing, and that request was forwarded to the Office of Hearings and Appeals. I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the Individual was represented by an attorney. He presented his own testimony and the testimony of two fellow aftercare attendees, his supervisor, two friends, his mother, his girlfriend, and his psychologist. The DOE Counsel presented one witness, the DOE consulting psychiatrist. The DOE Counsel entered 15 exhibits into the record.

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<sup>2/</sup> Criterion H refers to information indicating that an individual has “an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J refers to information indicating that an individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” *Id.* at § 710.8(j).

## *II. Hearing Testimony*

In his response to the Notification Letter and at the hearing, the Individual did not dispute the diagnosis of the DOE consulting psychiatrist that he suffered from alcohol dependence. Hearing Transcript (Tr.) at 103; DOE Ex. 7 at 1-2. Accordingly, the focus of the hearing was on the steps that the Individual has taken toward reformation and rehabilitation.

### *A. The Individual*

The Individual testified that he sought counseling in August 2006 to try to reduce his alcohol consumption. Tr. at 105. He testified that it was a “waste of time,” because at that time, he did not believe that alcohol consumption caused any problems for him. Tr. at 106-07. In 2006, he just wanted to learn to control his alcohol consumption. Tr. at 107.

The Individual testified that he ceased consuming alcohol on June 25, 2007. Tr. at 116. He now knows that he cannot consume alcohol again. Tr. at 108. He keeps track of the number of days of his sobriety on a board on his refrigerator. Tr. at 116-17. He changes the number every morning and changed it to 296 on the morning of the hearing. Tr. at 117.

The Individual testified that he attends AA twice a week and aftercare once a week. Tr. at 114. He is between steps seven and eight of the AA twelve-step program. Tr. at 119. He has had a sponsor since mid-July 2007. Tr. at 118. Two weeks prior to the hearing, the Individual talked to his sponsor about testifying at the hearing. Tr. at 119. Since that time, the Individual has been unable to contact his sponsor. Tr. at 120. Because he has been unable to contact his sponsor, he is presently seeking a new sponsor. Tr. at 121. He testified that, even without an active sponsor, he has “enough tools in my toolbox” to adjust to any problems that may appear. Tr. at 121. He stated that he has resources if he sees a problem developing, including the two friends who testified at the hearing, his psychologist, and other AA attendees. Tr. at 122. He stated that he believes his real life started the day he stopped consuming alcohol. Tr. at 123. He intends to continue his attendance at AA and sessions with his counselor. Tr. at 128. The Individual stated that

AA gives me reassurance of who I am versus what I was, give me the tools to cope with my problems and my situations, based on listening to people at the meetings, because they may have a problem that they are talking about that you’re facing right now, and it just – it may shine the light on your situation or something that you’re thinking about, but it doesn’t really hit home until you hear it coming out of somebody else’s mouths.

It’s just reassuring. It makes you feel good when you leave.

Tr. at 131-32.

## B. The Individual's Girlfriend

The Individual's girlfriend testified that she met the Individual in August 2007. Tr. at 72. She sees the Individual almost every day. Tr. at 73. She does not see the Individual on the days that he attends AA, but sometimes she babysits his children on those days. Tr. at 75. She goes to the Individual's apartment about twice a month; she has never seen alcohol there. Tr. at 78. She has never seen the Individual consume an alcoholic beverage. Tr. at 74. She stated that she does not believe that the Individual will ever consume alcohol again. Tr. at 79. She consumes alcohol and occasionally keeps beer in her house to serve to visitors. Tr. at 84-85. His girlfriend testified that the Individual does not want to miss an AA meeting. Tr. at 76. He has told her that AA is good for him and that he learns from it. Tr. at 76.

## C. The Individual's co-workers and supervisor

The Individual's first co-worker testified that has known the Individual since they were seventeen. Tr. at 40. They started work with DOE the same day. Tr. at 40. They usually see each other at work but, occasionally, the co-worker has asked the Individual to help him around his home. Tr. at 42. The Individual told the co-worker that he had a problem consuming alcoholic beverages. Tr. at 43. The co-worker testified that he has seen a "pretty positive change" in the Individual's behavior and outlook during the past year. Tr. at 51. The co-worker stated that the Individual's "desire to drink is not there." Tr. at 42-43.

The second co-worker stated that he has known the Individual for approximately 18 years. Tr. at 55. The Individual was an apprentice with him for two years. Tr. at 56. He stated that he was a good employee. Tr. at 56. He stated that after they started working together in June 2001 at DOE, he and the Individual would work on jobs outside of DOE. Tr. at 57. He never saw the Individual intoxicated during the time they spent together outside of work. Tr. at 58. He was amazed when he found out that the Individual had a problem with his alcohol consumption. Tr. at 58. Because the co-worker had not seen the Individual intoxicated during their acquaintance, he could not testify to the Individual's abstinence. However, the co-worker did testify that he has questioned the Individual about his alcohol consumption since June 2007. Tr. at 60. The Individual has been open and appeared honest in his answers. Tr. at 59. The co-worker stated that the Individual is more outgoing and smiles more since he stopped consuming alcoholic beverages. Tr. at 60-62.

The Individual's supervisor testified that he has worked with the Individual for three and a half years. Tr. at 63. Presently, they speak about one time a month. Tr. at 66. As an employee, the Individual is an excellent worker who is beyond reproach. Tr. at 63-64. The Individual admitted to the supervisor that he did have a problem consuming alcoholic beverages. Tr. at 66.

#### D. Two Aftercare Attendees

The first aftercare attendee testified that she has known the Individual since June 2007. Tr. at 10. They met in aftercare, which is a support group for people who attend the intensive outpatient treatment program. Tr. at 10. She sees the Individual at aftercare about two times a month as well as at cookouts at her house and for coffee to talk. Tr. at 11, 15. In addition, they talk by telephone to encourage each other in their sobriety. Tr. at 11. The Individual always shares information during aftercare. Tr. at 11. She believes that if the Individual were facing a crisis with his recovery he would talk to her about it. Tr. at 13. The first aftercare attendee believes the Individual will be successful in his sobriety because he has a good support group, stays in contact with his sponsor, and attends AA and aftercare meetings. Tr. at 14.

The second aftercare attendee testified that she met the Individual at the IOTP they both attended. Tr. at 18. She met him in early summer 2007. Tr. at 18. She stated that the Individual came to the program on his own, rather than being "pushed into treatment." Tr. at 18. She currently sees the Individual at aftercare every week and they talk by telephone and send text messages frequently. Tr. at 19, 22. The Individual always participates appropriately during the aftercare meetings. Tr. at 19. During the time she has known the Individual, he has not shown any signs that he has resumed consuming alcohol. Tr. at 20. She has never smelled alcohol on him. Tr. at 21. She has never seen alcohol at his house. Tr. at 21. She testified that he keeps a board on his refrigerator marking the numbers of days he has been sober. Tr. at 21. It is the first thing he sees in the morning and the last thing he sees at night. Tr. at 21.

#### E. The Individual's Mother

The Individual's mother testified that she sees her son more frequently since he stopped consuming alcohol. Tr. at 25. Prior to his abstinence, she would see him at holidays, about four or five times a year. Tr. at 25. Presently, she sees the Individual about four or five times a week, and they speak on the telephone three to four times a week. Tr. at 27, 36. She has not seen him consume alcohol since he stopped in June 2007. Tr. at 27. She has not smelled alcohol on him. Tr. at 27. She visits his home once or twice a week and has never seen alcohol there. Tr. at 28. She said the Individual indicated that he is "happier than he has ever been." Tr. at 29. She testified that he is "more outgoing, more loving, more talkative. When he was drinking, he didn't talk." Tr. at 37.

#### F. The Individual's Psychologist

The psychologist testified that she has a degree in psychology and is a licensed professional counselor and a licensed chemical dependency counselor. Tr. at 25. She first saw the Individual on August 8, 2006, when he reported that he was having a problem with his

alcohol consumption. Tr. at 88. He stopped attending sessions with his psychologist after three months and restarted on April 19, 2007. Tr. at 88.

In April 2007, the psychologist suggested an IOTP. Tr. at 89. She ascertained that he did well in the program and appeared well motivated. Tr. at 90. After completing the IOTP, the Individual and his psychologist resumed their counseling sessions. Tr. at 91. Immediately following his completion of the IOTP, they met every week to ten days. Tr. at 91. Eventually, they began meeting once a month. Tr. at 91. They continue meeting once a month as of the time of the hearing. Tr. at 92. She monitors his AA and aftercare attendance. Tr. at 93.

She diagnosed the Individual as suffering from alcohol dependence. Tr. at 91. She concurred with the DOE consulting psychiatrist's recommendations regarding rehabilitation and reformation. Tr. at 92. She testified that, if the Individual continues to follow her future recommendations and those of the aftercare program, his probability of consuming alcohol again in the future is low. Tr. at 93. She stated that he has followed all recommendations since April 2007, both her recommendations and those of the DOE consulting psychiatrist. Tr. at 93. She explained that when he stopped seeing her in October 2006, she had not specifically stated to him that he needed counseling every week for a specified number of sessions. Tr. at 98. She testified, "I think he thought that he had the deal done, that he was doing well, that he probably didn't need to come back." Tr. at 98.

#### G. The DOE Consulting Psychiatrist

With respect to the Individual's alcohol problems, the DOE consulting psychiatrist testified that she evaluated the Individual on October 9, 2007. Tr. at 136. She diagnosed the Individual as suffering from alcohol dependence. Tr. at 138. She recommended that he have one year of absolute sobriety, if the Individual followed treatment recommendations. Tr. at 138.

As to her recommendation for rehabilitation or reformation,<sup>3/</sup> the DOE consulting psychiatrist stated that at the time she saw the Individual he had been abstinent for four months. Tr. at 138. Nothing she heard at the hearing changed her recommendation that the Individual should be abstinent for one year. Tr. at 140. She testified that he is taking the right course of action to mitigate the concerns raised by the diagnosis of alcohol dependence; he just does not have enough time in abstinence. Tr. at 140-41, 143. "I look at the person. I look at the length of time that the disease had been developing. I looked

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<sup>3/</sup> At the hearing, the DOE consulting psychiatrist did not outline her recommendations for rehabilitation or reformation again in testimony, allowing those recommendations from her report to stand on their own. She did not change those recommendations at the hearing.

at the quality of how it developed. . . . [I]n my opinion, [the Individual] has to have that minimum [one year]. He suffers from alcohol dependence.” Tr. at 144-45. He has been suffering from alcohol dependence for 10 years. Tr. at 145. She testified that he was doing very well on his treatment program when she saw him in October and is still doing very well on the treatment program ten months after he started it. Tr. at 146. She found that to be a positive factor in the Individual’s favor. Tr. at 146.

### *III. Standard of Review*

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of proceeding, we apply a different standard, which is designed to protect national security interests. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). The burden is on the Individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of the national security test” for the granting of security clearances indicates that “security-clearance determinations should err, if they must, on the side of denials.”) *Dorfman v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the Individual in cases involving security clearance eligibility. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the Individual has the burden of going forward with evidence to rebut, refute, explain, extenuate, or mitigate the allegations. *Personnel Security Hearings* (Case No. VSO-0005), 24 DOE ¶ 82,753 (1995), *aff’d*, 25 DOE ¶ 83,013 (1995). *See* 10 C.F.R. § 710.7(c).

### *IV. Criteria H and J Findings and Conclusions*

As noted above, the Individual does not dispute the diagnosis of alcohol dependence and admits that it raises a security concern for the DOE. The issue in this case is therefore whether the Individual has demonstrated that he is reformed and/or rehabilitated from this condition. As discussed below, I find that the Individual has brought forward significant mitigating information but he is not reformed or rehabilitated at this time.

I am persuaded by the testimony that the Individual is following the experts' recommendations. The Individual and his psychologist testified that he entered and successfully completed an IOTP. The Individual testified that he attends aftercare and AA. His attendance was corroborated by the testimony of his girlfriend, psychologist, and fellow aftercare attendees. Both he and his psychologist testified that she counsels him once a month, as both she and the DOE consulting psychiatrist recommended.

I am also persuaded that the Individual has been abstinent since June 2007. He testified that he has not consumed alcohol since June 25, 2007. His girlfriend supported his testimony, stating that she has not seen him consume alcohol since they met in August 2007. In addition, she testified that he does not keep alcohol in his home. His mother testified that she has not seen him consume alcohol since June 2007, and he does not keep alcohol in his home. One of his fellow aftercare attendees testified that the Individual tracks his days of sobriety on a white board on his refrigerator. The Individual corroborated this and stated that he changes the number every morning.

However, both experts agree that it is still somewhat early to conclude that the Individual is reformed or rehabilitated from his alcohol dependence. The DOE consulting psychiatrist testified that one year of abstinence is the minimum necessary before the Individual can be considered rehabilitated. The DOE consulting psychiatrist gave an especially cogent reason for this minimum time in relation to this Individual; the Individual has been suffering from alcohol dependence for ten years. The Individual's psychologist agreed with the DOE consulting psychiatrist that the one-year abstinence period is appropriate in this case. Having finished only about ten months of abstinence as of the time of the hearing, the Individual has not finished this aspect of his rehabilitation.

Neither expert believes the Individual has completed treatment as of the time of the hearing. The DOE consulting psychiatrist reiterated the validity of her recommendation that the Individual attend AA and aftercare for an eight months past the date of her report and have one-on-one counseling for an six months past the date of her report. The Individual's psychologist supported the DOE consulting psychiatrist's recommendations. Even though the Individual continues attending aftercare and AA, he had completed only about six months of AA and aftercare as of the time of the hearing. Therefore, the Individual has not finished this aspect of his rehabilitation as recommended by the DOE consulting psychiatrist.

Although I believe that the Individual is sincere in his commitment to his sobriety, I find that at the time of the hearing, he did not have enough time committed to abstinence, nor did he have enough time in treatment. Consequently, I find that the concern raised under Criterion J by the DOE consultant psychiatrist's diagnosis of alcohol dependence has not been mitigated by the evidence provided by the Individual. In addition, I find that the concern raised under Criterion H raised by the DOE consultant psychiatrist's finding that



the Individual has a mental condition that causes or may cause a significant defect in his judgment or reliability has not been mitigated by the evidence provided by the Individual.

**V. Conclusion**

As the foregoing indicates, I have found that there was sufficient derogatory information in the possession of the DOE that raised security concerns under Criteria H and J. After considering all the relevant information, I find that the Individual has not resolved the Criteria H and J security concerns cited in the Notification letter. Therefore, I cannot conclude that granting the Individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be restored. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: July 3, 2008